



85TH TEXAS LEGISLATIVE SESSION DEBRIEFING
REPORT



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Two issues dominated the attention of the 85th Regular Session of the Texas Legislature. “Sanctuary Cities” and the “Bathroom Bill” affected the agenda and stoked emotions throughout the session. Both resulted in controversial outcomes. One is now the centerpiece of a court battle and the other is blamed for forcing the upcoming special session.

Two other considerations, school finance and border security, drove the appropriations process and led to further discord. Democrats, a minority in both chambers, adopted a strategy of procedural delay, especially regarding controversial bills. Discord and delay proved to be a fatal combination for hundreds of bills, even though they had managed to reach the Daily Calendar for a final vote, including several which we supported.

It is no secret that the legislative process in Texas is designed to frustrate the passage of bills. In this session 6,631 bills were filed in the two chambers and only 1,211 passed. Fifty bills were vetoed by the Governor, resulting in a success rate of only 17.5%. Still, that is a far higher success rate than one would find for highly substantive bills.

Some threatening legislation, such as attempts to eliminate density bonus programs, extreme NIMBY legislation, and defunding housing programs, were averted. However, the general direction of state leadership has been to limit local governments. One consequence is that local governments have lost the capacity to meet affordable housing shortages with revenue from “linkage fees” on new construction.

TACDC worked for initiatives to increase supportive housing, to adopt appraisal guidelines for community land trusts, to expand Homestead Preservation District authority and change the de-concentration policy for housing tax credits. These efforts failed as well. Not all was lost as we will soon be able to count Volunteer Income Tax Assistance facilities among non-profit properties which are exempt from property taxes.

Governor Abbott released his [Proclamation for the 1st Special Session](#) on July 10, 2017. He clearly indicated his concern for the continuation of several significant state agencies (including the Texas Medical Board) which would be abolished by our Sunset law without specific legislative action.

In addition, he indicated 19 other specific legislative concerns which might be considered during this special session. Three of these concern political subdivision authority regarding rules, regulations, and permits relating to private property rights. This is clearly a “heads up” to all of us concerned with municipal powers to address community development and affordable housing needs.

The following is a recap of TACDC’s work on several key pieces of legislation during this session. With this special session looming, it is a good time to review our efforts, as we may find some of these issues revisited, for better or worse.

If you have questions about any of the legislation listed below or would like additional information on any bills this session, please contact me at 512.916.0508 or at matt@tacdc.org.



At the time of our April 2017 TACDC Conference, we reviewed ten active bills which we believed to be significant legislation and which represented four of TACDC’s key legislative objectives.

We trained teams of advocates among our conference attendees and spent an afternoon at the Capitol, where we encouraged action on the following ten bills.

Bill #	TACDC Objective	Bill Description
SB 1990	Encourage Supportive Housing Development	Prioritizes Supportive Housing development by awarding guaranteed tax credits to the highest scoring supportive housing application in certain re-
SB 1991		Permits the Department (TDHCA) to award as much as 15% of its HOME CHDO set-aside to CHDOs in any area of the state, including PJs , which
SB 1345	Non-profit Exemptions	Adds free financial services programs to the list of activities that the Texas tax code now honors in extending the non-profit property tax
HB 3447	Non-profit Appraisals	Creates a consistent and clear appraisal methodology for CLT land and homes. It clarifies that a CLT exemption must only be adopted once by the city or county and it requires an eligible CLT to be a 501(c)(3) nonprofit corporation or a subsidiary of the nonprofit.
HB 3281	Homestead Preservation Districts	Resolves technical questions regarding the population data which creates eligibility for Austin to operate HPDs.
HB 3452		Revisits several requirements and thresholds of the original legislation. It increases the responsibility of HPDs to residents who have been displaced or are at risk of displacement and revises the income targets for investments funded by the Homestead Tax Reinvestment Zones.
HB 3691		Expands the availability of HPD adoption to any city in Texas with a population over 750,000. It revises the demographic eligibility required
HB 3676		Oppose Undermines the capacity of local governments to leverage their public infrastructure investment to engage market-rate development in
SB 1025	Migrant Farm-Labor Housing	Strengthens oversight of migrant farm-worker housing by mandating stricter inspection procedures, proactive enforcement, enhanced
SB 2029		Provides tools and incentives to help agricultural employers and nonprofit organizations (who meet certain health and safety requirements) to increase availability of housing for migrant farm-workers.

Now that the 85th Regular Session is over and the Governor’s Veto window has closed, here is an analysis of the outcome for these bills and others which are important to our members.

SUPPORTIVE HOUSING

“Supportive Housing” is residential rental property for households which need specialized, non-medical services to achieve and maintain independent living. This may include transitional housing for **veterans** experiencing homelessness or at risk of homelessness, **survivors of domestic violence** and those **aging out of foster care**.

To qualify as supportive housing, a development is expected to be debt free or have no permanent foreclosable debt.

[SB 1990](#) Prioritizes Supportive Housing development by awarding guaranteed tax credits to the highest scoring supportive housing application in certain regions.
Watson

Late last summer we began working on legislation to provide more resources for the development of Supportive Housing. This bill gives first preference to no more than five LIHTC applications which meet the Department’s definition of “supportive housing” and are sited in urban communities in certain uniform state service regions. Unfortunately, this bill died in the Senate.

[SB 1991](#) Permits the Department (TDHCA) to award **as much as 15% of its HOME CHDO set-aside** to CHDOs in any area of the state, including **PJs**, when serving Texans with disabilities.
Watson

Although the term “supportive housing” never appears in this bill, SB 1991 would have encouraged the development of supportive housing. The bill would have permitted CHDO’s in participating jurisdictions to tap into a larger share (from 5% to 15%) of the State’s direct HOME funds when used to provide housing for people with disabilities in Texas.

The bill is basically a permissive bill which benefits efforts to provide supportive housing for people with disabilities. This bill had no apparent opposition when it was placed on the last Local and Uncontested Calendar, but it was killed on the House floor.

SUPPORTING NON-PROFIT EXEMPTIONS

Nonprofit organizations throughout Texas are helping families file their taxes, balance a budget, repair credit and provide other financial services free of charge with volunteers.

These programs serve hard working Texans, who otherwise must pay high fees to prepare returns and pay their taxes. The current list of charitable work that qualifies for property tax exemption does not include free financial services. Until now, our community providers have been forced to pay property taxes on the facilities necessary to run the program.

[SB 1345](#) Adds **free financial services programs** to the list of activities that the Texas tax code now honors in extending the non-profit property tax exemption.
Watson

SB 1345 passed the Legislature and was signed by the Governor on June 15. Beginning January 1, 2018, these facilities will be covered by the non-profit property tax exemption.

SUPPORT FAIR APPRAISALS OF COMMUNITY LAND TRUST PROPERTY

A community land trust (CLT) is an important tool for expanding homeownership opportunities for low- and moderate-income families in Texas. Community land trusts can facilitate the transformation of vacant and blighted land into affordable homes. Today there are approximately 250 CLTs operating in 45 states, including Texas.

There are several problems with current law regarding a fair appraisal of community land trust properties.

- It is unclear whether a CLT must be a nonprofit corporation to qualify for the CLT exemption and whether it can set up a subsidiary to own the land.
- There are conflicting deadlines and problematic timing issues in the Tax Code.

The statutory language governing the appraisal of CLT property lacks clarity. This impacts the CLT's ability to estimate costs for a CLT project and makes CLT homeowners more vulnerable to losing their home.

[HB 3447](#)

E Rodriguez

Creates a consistent and clear appraisal methodology for CLT land and homes. It clarifies that a CLT exemption must only be adopted once by the city or county and it requires an eligible CLT to be a 501(c)(3) nonprofit corporation or a subsidiary of the nonprofit.

[SB 1931](#)

West

These bills were not identical companion bills, but both sought to fulfill the objective of clarifying CLT appraisals. The House bill (**HB 3447**) was referred to the Land and Resource Management Committee, but was never given a hearing.

The Senate bill (**SB 1931**) was passed favorably (as substituted) in the Intergovernmental Relations Committee. It passed the Senate on the Local and Uncontested calendar and was forwarded to the House on May 11. The bill died in the House Committee on Land and Resource Management.

PROTECT AND EXPAND HOMESTEAD PRESERVATION DISTRICT AUTHORITY

In 2005 the Texas Legislature authorized a unique local approach to community revitalization and new development tools for protecting the equity of low-income home owners in neighborhoods near the urban core.

Homestead Preservation Districts include financing tools which support:

- Development of affordable rental housing
- Preservation of at-risk homeownership
- New opportunities for homeownership
- Community Land Trusts

Homestead Preservation Districts, in combination with Homestead Preservation Reinvestment Zones, can provide a dedicated funding stream to reinvest in the area’s housing affordability.

[HB 3281](#) Resolves technical questions regarding the population data which creates eligibility for Austin to operate HPDs.

E. Rodriguez

When Homestead Preservation Districts were first authorized (2005) the statute was written narrowly, so that only Austin would be eligible under the statute.

Since “bracketing” a bill is unconstitutional, legislators often achieve the same end by using unique characteristics in the bill language to indicate geographic applicability. In 2005, Austin was referred to as a city with a population over “750,000 that is located in a uniform state service region with fewer than 550,000 occupied housing units.” In 2010, however, the census found that Austin’s service region had exceeded 550,000 ceiling. This bill raised that ceiling. The bill was passed by the legislature and sent to the Governor, who vetoed the bill.

[HB 3452](#) Revisits several requirements and thresholds of the original legislation. It increases the responsibility of HPDs to residents who have been displaced or are at risk of displacement and revises the income targets for investments funded by the Homestead Tax Reinvestment Zones.

E. Rodriguez

This bill was intended to protect and enhance the public investment associated with Homestead Preservation Districts. HB 3452 requires that any community land trust designated to serve the district must have a declared mission to:

- Acquire and hold land for the benefit of providing long-term affordable housing for residents who have been displaced or at risk of being displaced,
- Keep housing affordable for future residents, and
- Capture the value of public investment for long-term community benefit.

Other specific directives of the bill would relax the AMFI requirements in the statute, but would still require that all revenue from the Homestead TIRZ would benefit low income families with specific set-asides for families at or below 60%, 50% and 30% of median family income.

HB 3452 died in the House Committee on Urban and Affairs. It was never given a public hearing.

[HB 3691](#) Expands authority for HPD adoption by any Texas city with more than 750,000 population, adds Houston, San Antonio and Ft Worth.

Bernal

[HB 3919](#) Expands authority for HPD adoption to any city over 2 million, adding Houston. Tinkers with other elements regarding district eligibility.

Thierry

Both of these bills were well received in the House. Both bills were voted out of House committee and placed on the May 9 General Calendar, the last calendar taken up by the House before its “Second Reading” cutoff.

One bill made it through before midnight (Thierry’s HB 3919) and the other did not. Thierry’s bill also passed through the Senate Committee, but failed to get a vote before the full Senate.

[HB 3676](#)

Isaac

Undermines the capacity of local governments to leverage their public infrastructure investment to engage market-rate development in creating and maintaining housing affordability.

For Texas, **inclusionary zoning** is just a good idea. No taxes, fees or use of eminent domain are required in order to create new affordable housing in rapidly growing urban areas. Conceptually, it gives local governments a way to extract public benefit from the billions of tax dollars invested in public infrastructure. Improvements which private developers need to make money.

For builders, and their investors, inclusionary zoning could reduce profits. Since 2005 builders have worked to eliminate the *possibility* of inclusionary zoning in Texas. In that year they succeeded in passing a law intended to prohibit municipal use of inclusionary zoning in Texas, **except in Homestead Preservation Districts**.

HB 3676 (substituted by **HB 4033**) was intended eliminate that one exception. HB 4033 was not heard in the House committee until very late in the session. It was passed out of the House Urban Affairs committee in early May but was never set for a floor vote.

MIGRANT FARM-WORKER HOUSING

Texas has the second largest migrant farm-worker population of any state, with an estimated population as high as 200,000 or more. The Texas Department of Housing and Community Affairs (TDCHA) is tasked with regulating farm-worker housing.

Current law defines migrant farm-workers as those who move from region to region following crop harvests. TDCHA must inspect and license migrant farm-worker housing facilities so that they meet a minimum standard of cleanliness and safety. The agency does this inspection and licensing through its

[SB 1025](#)

Rodriguez

Strengthens oversight of migrant farm-worker housing by mandating stricter inspection procedures, proactive enforcement, enhanced community outreach, and penalties for noncompliant growers.

Hinojosa

[SB 2029](#)

Rodriguez

Provides tools and incentives to help agricultural employers and nonprofit organizations (who meet certain health and safety requirements) to increase availability of housing for migrant farm-workers.

These bills died in the Senate Committee on Agriculture, Water and Rural Affairs without ever receiving a public hearing.

Only three other bills in this session dealt with the serious issue of safety in migrant farm-worker housing. SB 3586 (Bernal) died in the House Committee on Urban Affairs and the two bills by Representative Romero (HB 1879 & HB 2365) died in the House Calendars committee.

OTHER AFFORDABLE HOUSING

[SB 1992](#)

Relaxes the statutory prohibition against multiple LIHTC awards for developments within two miles of another. The bill was amended during the process to apply only to Austin.

Watson

Twenty years ago there was systematic pressure to place most new LIHTC developments in priority census tracts (Qualified Census Tracts) based on indicators of economic stress and under-development. Consequently, developers chose development sites in these areas and awards were made accordingly. The outcome was a problem for the goal of affirmatively pursuing **fair housing** and resistance developed in the inner-city areas where communities felt overburdened by too many LIHTC properties.

In response, representatives of low-income areas sought to spread this development by initiating a “two-mile rule” against concentrating new tax credit developments.

Later, fair housing activists took the state to court and forced the department to begin considering the value of “high opportunity” areas as a priority for tax credit investment. The unfortunate outcome of these two pressures is that large cities with great need for affordable housing are getting few developments, while small suburban towns are receiving multiple awards.

SB 1992 was an effort to achieve balance in the geographic distribution of LIHTC properties. Since negotiation with urban representatives failed to produce an acceptable state-wide plan, it was adjusted to apply only to Austin.

The bill was passed by the Legislature, but was ultimately vetoed by the Governor.